

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

SHARON WEST

PLAINTIFF

VERSUS

CIVIL ACTION NO. 2:07cv12-KS-MTP

UNUM PROVIDENT, et al.

DEFENDANT

ORDER DENYING MOTION TO SUPPLEMENT RECORD

THIS MATTER is before the court on the plaintiff's motion [19] to supplement record, and the court having considered the motion finds that it should be DENIED.

As plaintiff points out, the decision from the Social Security Administration was rendered after plan administrator's decision to deny benefits. Accordingly, it is not part of the record in this matter. In *Vega v National Life Ins. Services, Inc.*, 188 F.3d 287, 299 (5th Cir. 1999) the court reiterated that "[a] long line of Fifth Circuit cases stands for the proposition that, when assessing factual questions, the district court is constrained to the evidence before the plan administrator." *Vega* recognized that the court may stray from the record only in limited circumstances such as when necessary to interpret the plan or to explain medical terms and procedures related to the claim. *Id.* Neither exception is present here.

In *Horton v. The Prudential Ins. Co. of America*, 51 Fed. Appx. 928 *2 (5th Cir. 2002), the court addressed the very issue before this court and concluded that the claimant's "social security determination falls under neither exception" recognized in *Vega* and that "the district court should have confined itself to the administrative record."¹

Movant's reliance on *Moller v. El Campo Aluminum Co.*, 97 F. 3d 85 (5th Cir. 1996) is

¹While the *Horton* decision is not published and, therefore, not controlling, it is nevertheless persuasive.

misplaced. In *Moller*, the court held that the Social Security Administration's decisions were relevant to the claim where the plan administrator's "general policy was to follow the decision of the Social Security Administration when determining eligibility... under the plan." *Id.* at 87-88.

That situation is not presented here.

IT IS, THEREFORE, ORDERED that plaintiff's motion to supplement the record is hereby is DENIED.

SO ORDERED this the 24th day of August, 2007.

s/ Michael T. Parker

United States Magistrate Judge